

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

THE STATE OF MICHIGAN,

File No. CA-82-10303

Plaintiff-Intervenor,

The Honorable Nancy G. Edmunds

v.

VELSICOL CHEMICAL CORPORATION,

Defendant.

**JOINT MOTION AND STIPULATED ORDER
TO AMEND CONSENT JUDGMENT AND PARTIALLY SUBSTITUTE PARTIES**

WHEREAS, in connection with a management buyout of Velsicol Chemical Corporation (Velsicol) in 1986, Fruit of the Loom, Inc. (FTL), NWI Land Management, Inc. (NWI), and Velsicol entered into an Assumption and Indemnity Agreement under which FTL and NWI agreed to assume certain environmental liabilities for seven named superfund sites and other sites of environmental contamination, including Velsicol's liabilities under a 1982 Consent Judgment for property described in the 1982 Consent Judgment as the "main plant site" and the "golf course site" and other assorted properties located in St. Louis, Michigan.

WHEREAS, FTL and NWI (Debtors) filed a Petition for Reorganization under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended, on December 29, 1999, in the United States Bankruptcy Court for the District of Delaware.

WHEREAS, on April 19, 2002, the Bankruptcy Court confirmed the Debtors' Plan of Reorganization, which became effective on August 19, 2002.

WHEREAS, on August 9, 2002, the Bankruptcy Court approved a Settlement Agreement between the United States and the States of Michigan, New Jersey and Tennessee, Velsicol, FTL, and NWI to resolve claims filed in FTL's bankruptcy proceeding (Bankruptcy Settlement Agreement).

WHEREAS, the Bankruptcy Settlement Agreement includes a settlement with Velsicol as provided therein based on Velsicol's limited ability to pay.

WHEREAS, the Bankruptcy Settlement Agreement, a copy of which is attached as Exhibit 1, was incorporated into Debtors' Plan of Reorganization and created the NWI/FTL Successor Trust as successor to certain obligations, rights and benefits of NWI and FTL as set out in the Bankruptcy Settlement Agreement.

WHEREAS, the Bankruptcy Settlement Agreement also created the Custodial Trust and authorized the transfer of title to certain properties identified in the Settlement Agreement, including the "St. Louis Facility," to the Custodial Trust. The "St. Louis Facility" includes the "main plant site" and the "golf course site" as set out in the 1982 Consent Judgment.

WHEREAS, the Bankruptcy Settlement Agreement provides a mechanism for the Custodial Trust to access available insurance funds held by the NWI/FTL Successor Trust in the St. Louis Facility Trust Account for use in conducting response actions at the St. Louis Facility.

WHEREAS, pursuant to Paragraph 17 of the Bankruptcy Settlement Agreement, the United States, the State of Michigan and Velsicol Chemical Company (the "Parties") agreed to seek an appropriate modification to the Consent Judgment to make it consistent with the Bankruptcy Settlement Agreement, including substitution of defendants, as appropriate.

WHEREAS, it is the intent of the Parties to harmonize Velsicol's obligations at the St. Louis Facility under the 1982 Consent Judgment with the Bankruptcy Settlement Agreement by the amendment set forth below.

WHEREAS, it is also the intent of the Parties not to amend other parts of the 1982 Consent Judgment that are not affected by the Bankruptcy Settlement Agreement such as provisions relating to property not owned by the Custodial Trust including, but not limited to, the Gratiot County Landfill.

The Parties therefore move to amend the 1982 Consent Judgment under Federal Rules of Civil Procedure Rule 25(c) as follows:

1. Except as provided in Paragraphs 2 and 3, Velsicol's obligations under the 1982 Consent Judgment are resolved.
2. The Custodial Trust is substituted for Velsicol Chemical Company in the 1982 Consent Judgment for Velsicol's obligations concerning the St. Louis Facility (limited to the extent of available funds or funds to be received in the St. Louis Facility Trust Account and to the extent of and subject to the terms of the Bankruptcy Settlement Agreement) to the extent of any outstanding obligations for performance under the 1982 Consent Judgment. Such substitution is without prejudice to (i) the rights of the United States and the State of Michigan against Velsicol for any matters reserved in Paragraph XXIV of the 1982 Consent Judgment and for purposes of recovery of insurance proceeds for the St. Louis Facility, and Velsicol shall remain a party to this action solely for such purposes, (ii) all releases and settlements of the parties under the 1982 Consent Judgment and (iii) the rights of the

United States and State of Michigan and Velsicol, under the bankruptcy Settlement Agreement.

3. To the extent that any provision of this Consent Judgment is inconsistent with the Bankruptcy Settlement Agreement, the terms of the Bankruptcy Settlement Agreement shall take precedence.

The Parties are lodging this Joint Motion and Stipulated Order with the Court pending public comment. The Parties request that the Court not approve and enter the Stipulated Order to Amend the 1982 Consent Judgment and Partially Substitute Parties at this time. Rather, notice of the lodging of the proposed amendment of the Consent Judgment and substitution of parties will be published in the Federal Register, following which the United States Department of Justice will receive public comments on the proposed Amendment for a 30 day period. At the conclusion of the comment period, the United States will file with the Court any comments received, as well as responses to the comments, and at that time, if appropriate, file a motion requesting the Court to approve and enter the Stipulated Order amending the 1982 Consent Judgment. The United States reserves the right to withdraw or withhold its Consent if the public comments regarding the Joint Motion and Stipulated Order to Amend the Consent Judgment and Partially Substitute Parties disclose facts or considerations which indicate that the amendment of the 1982 Consent Judgment and partial substitution of parties is inappropriate, improper, or inadequate.

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UNITED STATES OF AMERICA
Plaintiff

By:

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date: *September*
~~10~~ 28, 2004

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Eastern District of Michigan

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By: _____
ALAN S. TENENBAUM
Environment and Natural Resources
Division
U.S. Department of Justice

Date: ^{October 6} ~~June~~ __, 2004

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**U.S. ENVIRONMENTAL PROTECTION
AGENCY**

By:

RICHARD C. KARL
Director, Superfund Division

Date: ^{SEP 08}~~June~~ 2004

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CUSTODIAL TRUST

LePETOMANE III, INC., not individually but
solely as Custodial Trustee *1.4 9/1/04*

By:

[Signature]
JAY A. STEINBERG, not individually
but solely as President of LePetomane
III, Inc., not individually but solely as
Custodial Trustee

Date: June 30, 2004

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STATE OF MICHIGAN
Plaintiff-Intervenor

By:

 JAMES L. STROPKAI (P24588)
Attorney for Plaintiff-Intervenor

DATE: AUG 31, 2004

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VELSICOL CHEMICAL CORPORATION
Defendant

By: _____
CHARLES R. HANSON, Vice
President, Environmental Health and
Safety

Date: June __, 2004

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IT IS SO ORDERED.

Dated: _____, 2004

District Judge